

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LATONYA C.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

CASE NO. 3:23-CV-5989-DWC

ORDER REVERSING AND  
REMANDING COMMISSIONER'S  
DECISION DENYING BENEFITS

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of Defendant's denial of her application for supplemental security income ("SSI") and disability insurance benefits ("DIB").<sup>1</sup> After considering the record, the Court concludes the Administrative Law Judge ("ALJ") erred when he failed to properly consider Plaintiff's subjective symptom testimony and the medical opinion evidence. Had the ALJ properly considered Plaintiff's testimony and the medical opinion evidence, the ALJ may have found the residual functional capacity ("RFC") assessment should have included additional limitations.

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<sup>1</sup> Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 5.

1 The ALJ's errors are therefore not harmless, and this matter is reversed and remanded pursuant  
2 to sentence four of 42 U.S.C. § 405(g) to the Commissioner of the Social Security  
3 Administration for further proceedings consistent with this Order.

#### 4 **I. Procedural History**

5 Plaintiff applied for benefits in August 2020 and alleges disability as of August 1, 2018.  
6 Dkt. 7, Administrative Record ("AR") 17. The applications were denied on initial review and  
7 reconsideration and, on February 16, 2023, ALJ Lawrence Lee determined Plaintiff was not  
8 disabled. AR 17-26. The Appeals Council denied Plaintiff's request for review, making the  
9 August 2022 decision the final decision of the Commissioner. *See* AR 1-3; 20 C.F.R. § 404.981,  
10 § 416.1481.

#### 11 **II. Standard of Review**

12 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of  
13 social security benefits if the ALJ's findings are based on legal error or not supported by  
14 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th  
15 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)). Substantial evidence is  
16 "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."  
17 *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (citations omitted). "We review only the  
18 reasons provided by the ALJ in the disability determination and may not affirm the ALJ on a  
19 ground upon which he did not rely." *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014)  
20 (citation omitted).

#### 21 **III. Discussion**

22 In the Opening Brief, Plaintiff alleges the ALJ erred by failing to properly consider: (1)  
23 Plaintiff's subjective symptom testimony; and (2) medical opinion evidence from Ms. Lesya  
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1 Bindas and Drs. Patricia Kraft and Renee Eisenhauer. Dkt. 9. Plaintiff requests the Court remand  
2 this case for further administrative proceedings. *Id.*

3 A. *Subjective Symptom Testimony*

4 First, Plaintiff asserts the ALJ failed to provide specific, clear or convincing reasons for  
5 rejecting Plaintiff's subjective symptom testimony. Dkt. 9 at 3-9.

6 "An ALJ engages in a two-step analysis to determine whether a claimant's testimony  
7 regarding subjective pain or symptoms is credible." *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th  
8 Cir. 2014). At the first step, the ALJ determines whether the claimant has presented objective  
9 medical evidence of an underlying impairment that could reasonably be expected to produce the  
10 pain or other symptoms alleged. *Id.* This evidence need not validate the severity of the alleged  
11 symptoms; rather, "the medical evidence need only establish that the impairment could  
12 reasonably be expected to cause some degree of the alleged symptoms." *Smith v. Kijakazi*, 14  
13 F.4th 1108, 1111 (9th Cir. 2021).

14 If the claimant satisfies this first step and there is no affirmative evidence of malingering,  
15 "the ALJ can reject the claimant's testimony about the severity of [their] symptoms only by  
16 offering specific, clear and convincing reasons for doing so." *Id.* at 1112 (quoting *Garrison*, 759  
17 F.3d at 1014–15). "This standard is 'the most demanding required in Social Security cases.'" *Id.*  
18 (quoting *Moore v. Comm'r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)). To meet this  
19 standard, ALJs must "identify which testimony [they] found not credible and why." *Brown-*  
20 *Hunter v. Colvin*, 806 F.3d 487, 489 (9th Cir. 2015).

21 The Ninth Circuit has reaffirmed that the clear and convincing standard requires the ALJ  
22 to make "specific finding[s]:"

23 [A]n ALJ does not provide specific, clear, and convincing reasons for rejecting a  
24 claimant's testimony by simply reciting the medical evidence in support of his or

1 her residual functional capacity determination. To ensure that our review of the  
2 ALJ's credibility determination is meaningful, and that the claimant's testimony is  
3 not rejected arbitrarily, we require the ALJ to specify which testimony she finds  
not credible, and then provide clear and convincing reasons, supported by evidence  
in the record, to support that credibility determination.

4 *Smith*, 14 F.4th at 1112 (quoting *Brown-Hunter*, 806 F.3d at 489). "The standard isn't whether  
5 our court is convinced, but instead whether the ALJ's rationale is clear enough that it has the  
6 power to convince." *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022). As with all findings by  
7 the ALJ, the specific, clear, and convincing reasons also must be supported by substantial  
8 evidence in the record as a whole. 42 U.S.C. § 405(g); *see also Bayliss*, 427 F.3d at 1214 n.1.

9 At the hearing before the ALJ, Plaintiff testified that she has only maintained part-time  
10 employment. AR 37. Plaintiff lives with her father, her sister, her sister's husband, and her  
11 nephew. AR 38. Plaintiff testified that she is responsible for most household chores, including  
12 cleaning the bathrooms and the kitchen, but she completes chores only two days per week. AR  
13 39-40, 45. Further, when she is completing chores, she must stop what she is doing every twenty  
14 to thirty minutes and sit down and rest for five to ten minutes because of stomach pain. AR 46.  
15 In her free time, Plaintiff likes to watch television and do crosswords. AR 41. She states she  
16 cannot really walk for exercise because her stomach and back will hurt. AR 42.

17 Plaintiff testified that she has bowel movements four to five times per day and her bowel  
18 movements come with urgency. AR 47. She will spend five to ten minutes in the bathroom and,  
19 after using the restroom, her stomach cramping requires her to sit for five minutes. AR 47-48.  
20 Plaintiff described the stomach pain as feeling like somebody is stabbing her. AR 48. Plaintiff's  
21 symptoms require her to lay down twice per day for about twenty minutes. AR 50.

22 Regarding Plaintiff's testimony, the ALJ found Plaintiff's "medically determinable  
23 impairments could reasonably be expected to cause the alleged symptoms." AR 22. However, the  
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1 ALJ determined Plaintiff's "statements concerning the intensity, persistence and limiting effects  
2 of these symptoms are not entirely consistent with the medical evidence and other evidence in  
3 the record." AR 22.

4 The ALJ provided only one reason for discounting Plaintiff's subjective symptom  
5 testimony: the ALJ found the medical records did not support the level of severity Plaintiff  
6 described. *See* AR 21-23. Determining that a claimant's complaints are "inconsistent with  
7 clinical observations" can satisfy the clear and convincing requirement. *Regennitter v. Comm'r*  
8 *of Soc. Sec. Admin.*, 166 F.3d 1294 at 1297 (9th Cir. 1999); *see also Fisher v. Astrue*, 429 F.  
9 App'x 649, 651 (9th Cir. 2011). However, an ALJ "may not disregard [a claimant's testimony]  
10 solely because it is not substantiated affirmatively by objective medical evidence." *Robbins v.*  
11 *Social Security Administration*, 466 F.3d 880, 883 (9th Cir. 2006); *see Orteza v. Shalala*, 50 F.3d  
12 748, 749–50 (9th Cir. 1995); *Byrnes v. Shalala*, 60 F.3d 639, 641-42 (9th Cir. 1995). Moreover,  
13 "an ALJ does not provide specific, clear, and convincing reasons for rejecting a claimant's  
14 testimony by simply reciting the medical evidence in support of his or her residual functional  
15 capacity determination." *Brown-Hunter*, 806 F.3d at 489. Rather, to discount a claimant's  
16 testimony, an ALJ "must state *which* testimony is not credible and what evidence suggests the  
17 complaints are not credible." *Dodrill, v. Shalala*, 12 F.3d 915, 917 (9th Cir. 1993) (emphasis  
18 added); *see also Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996).

19 Here, the ALJ summarized evidence contained in the medical records, but the ALJ did  
20 not link the cited medical records to any specific portions of Plaintiff's testimony. *See* AR 21-23.  
21 In only providing a recitation of the medical evidence, the ALJ failed to identify *which* parts of  
22 Plaintiff's testimony is unsupported and *why* Plaintiff's testimony is not supported by the  
23 objective medical evidence. *See Brown-Hunter*, 806 F.3d at 492 ("the agency [must] set forth the  
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reasoning behind its decisions in a way that allows for meaningful review”); *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003) (“We require the ALJ to build an accurate and logical bridge from the evidence to her conclusions so that we may afford the claimant meaningful review of the SSA’s ultimate findings.”). Furthermore, as stated above, the ALJ cannot discount Plaintiff’s testimony solely because it is unsupported by the medical evidence, which is precisely what the ALJ did in this case. *See Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998) (“[T]he Commissioner may not discredit the claimant’s testimony as to the severity of symptoms merely because they are unsupported by objective medical evidence.”). The ALJ’s decision to rely solely on the objective medical evidence to discount Plaintiff’s testimony and the ALJ’s failure to adequately explain how Plaintiff’s testimony is unsupported by the medical evidence is error.

Accordingly, the ALJ did not provide a clear and convincing reason for rejecting Plaintiff’s subjective symptom testimony. Had the ALJ properly considered Plaintiff’s testimony, the RFC and hypothetical questions posed to the vocational expert may have contained additional limitations. For example, the RFC and hypothetical questions may have included limitations reflecting Plaintiff’s need to take five-to-ten-minute breaks every twenty to thirty minutes because of pain. Because the ultimate disability determination may have changed with proper consideration of Plaintiff’s testimony, the ALJ’s error is not harmless and requires reversal. *See Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012).

#### B. *Medical Opinion Evidence*

Second, Plaintiff alleges the ALJ erred in his consideration in the medical opinions of Ms. Bindas and Drs. Kraft and Eisenhauer. Dkt. 9.

i. Legal Standard

The regulations regarding the evaluation of medical opinion evidence have been amended for claims filed on or after March 27, 2017. *Revisions to Rules Regarding the Evaluation of Medical Evidence* (“*Revisions to Rules*”), 2017 WL 168819, 82 Fed. Reg. 5844, at \*5867-68; \*5878-79 (Jan. 18, 2017). Since Plaintiff filed his claim after that date, the new regulations apply. *See* 20 C.F.R. §§ 404.1520c, 416.920c. Under the revised regulations, ALJs “will not defer or give any specific evidentiary weight, including controlling weight, to any medical opinion(s) or prior administrative medical finding(s). . . .” 20 C.F.R. §§ 404.1520c(a), 416.920c(a). Instead, ALJ’s must consider every medical opinion or prior administrative medical findings in the record and evaluate each opinion’s persuasiveness using the factors listed. *See* 20 C.F.R. § 404.1520c(a), 416.920c(a). The two most important factors are the opinion’s “supportability” and “consistency.” *Id.* ALJs must explain “how [they] considered the supportability and consistency factors for a medical source’s medical opinions or prior administrative medical findings in [their] . . . decision.” 20 C.F.R. §§ 20 C.F.R. 404.1520c(b)(2), 416.920c(b)(2). “Supportability means the extent to which a medical source supports the medical opinion by explaining the ‘relevant . . . objective medical evidence.’” *Woods v. Kijakazi*, 32 F.4th 785, 791-2 (9th Cir. 2022) (citing 20 C.F.R. § 404.1520c(c)(1)); *see also* § 416.920c(c)(1). “Consistency means the extent to which a medical opinion is ‘consistent . . . with the evidence from other medical sources and nonmedical sources in the claim.’” *Woods*, 32 F.4th at 792 (citing 20 C.F.R. § 404.1520c(c)(2)); *see also* § 416.920c(c)(2).

ii. Ms. Bindas

On March 26, 2021, Lesya Bindas, PMHNP-BC, performed a mental evaluation of Plaintiff. AR 591-94. After reviewing prior records, conducting a clinical interview, and

1 conducting a mental status examination (“MSE”), Ms. Bindas diagnosed Plaintiff with Suspected  
2 Major Depressive Disorder, single episode, moderate. AR 591-94. Ms. Bindas opined that  
3 Plaintiff’s ability to reason and understand and her remote memory were fair. AR 594. She found  
4 Plaintiff’s sustained concentration and persistence were fair. AR 594. She opined that Plaintiff’s  
5 recent memory, immediate memory, and social functioning and interaction were impaired. AR  
6 594. Ms. Bindas found Plaintiff had fair ability to adapt to situations. AR 594. Overall, Ms.  
7 Bindas stated that Plaintiff’s symptoms of suspected Major Depressive Disorder could impact  
8 Plaintiff’s ability to be a dependable employee or to tolerate changes in the work environment.  
9 AR 594.

10 The ALJ discussed Ms. Bindas’s findings and then stated,

11 The undersigned finds this opinion to be unpersuasive. Although some memory  
12 deficiencies were noted on mental status examination during Ms. Bindas  
13 examination of the claimant, this opinion was based upon a one-time examination  
14 of the claimant. In addition, the opinion is inconsistent with the record as a whole,  
15 including with the claimant’s reports that she has received no mental health  
16 treatment as of the date of the hearing. The opinion is also inconsistent with the  
17 claimant’s reports that she watches television, does crossword puzzles, hangs out  
18 with family, and lives with 4 other adults. Moreover, the opinion is further  
19 inconsistent with findings that she had a normal mood and affect, and with findings  
20 that she demonstrated good judgment and insight.

21 AR 24 (internal citations omitted).

22 First, the ALJ found Ms. Bindas’s opinion regarding memory deficiencies unpersuasive  
23 because it was a one-time examination. AR 24. The ALJ is permitted to consider the length,  
24 purpose, and extent of the treating relationship in considering the persuasiveness of a medical  
opinion under the new regulations. *See* 20 C.F.R. § 404.1520c(c)(3). However, the fact Ms.  
Bindas only examined Plaintiff once, standing alone, is not a legally sufficient basis for rejecting  
her opinions. *See Yeakey v. Colvin*, 2014 WL 3767410, at \*6 (W.D. Wash. July 31, 2014)  
 (“Discrediting an opinion because the examining doctor only saw claimant one time would



effectively discredit most, if not all, examining doctor opinions.”); *Mary Elizabeth C. v. Saul*, 2020 WL 2523116, at \*8 (C.D. Cal. May 18, 2020) (finding ALJ improperly discounted opinion “on the basis that his evaluation was based on a single examination); *Sean B. v. Comm’r, Soc. Sec. Admin.*, 2023 WL 7404567 (D. Or. Nov. 9, 2023) (“A one-visit sample size may be a reason to discount an examining doctor’s opinion relative to the opinion of a more longstanding treating doctor, but it is not a reason to discount the examining doctor’s opinion on its own.”). The ALJ erred by finding Ms. Bindas’s opinion was unpersuasive because it was a one-time examination.

Second, the ALJ found Ms. Bindas’s opinion unpersuasive because her opinion was inconsistent with the record as a whole that showed Plaintiff has received no mental health treatment. AR 24. The ALJ does not adequately explain how Ms. Bindas’s opinion is inconsistent with the record. Further, Ms. Bindas was aware Plaintiff had not received mental health treatment when she examined Plaintiff and submitted her opinion. *See* AR 591. The ALJ does not explain or reconcile Ms. Bindas’s acknowledgement of Plaintiff’s treatment history with his finding that Plaintiff’s treatment history is inconsistent with Ms. Bindas’s findings. Finally, the Ninth Circuit has held “the fact that [the] claimant . . . did not seek treatment for a mental disorder until late in the day is not a substantial basis on which to conclude that [a physician’s] assessment of claimant’s condition is inaccurate.” *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996). Therefore, the ALJ erred by finding Ms. Bindas’s opinion was unpersuasive because it was not supported by the record.

Third, the ALJ found Ms. Bindas’s opinion was inconsistent with the Plaintiff’s reports that she watches television, does crossword puzzles, hangs out with family, and lives with four other adults. AR 24. Here, the ALJ failed to explain how Plaintiff’s limited daily activities are inconsistent with Ms. Bindas’s opinion. Instead, the ALJ “merely states” these facts “point

1 toward an adverse conclusion” but “makes no effort to relate any of these” facts to “the specific  
2 medical opinions and findings [he] rejects.” *Embrey*, 849 F.2d at 421. “This approach is  
3 inadequate.” *Id.* Moreover, Ms. Bindas considered Plaintiff’s activities of daily living and  
4 Plaintiff’s social functioning when reaching her opinion. AR 593-94. Specifically, Ms. Bindas  
5 considered that Plaintiff could perform her self-care independently, could cook, could perform  
6 housework tasks, had family members and a boyfriend as support in her life, and enjoyed word  
7 games on her phone. AR 593-94. As the ALJ failed to provide more than a conclusory statement  
8 that Ms. Bindas’s opinion was inconsistent with Plaintiff’s activities of daily living and as Ms.  
9 Bindas considered Plaintiff’s daily activities in reaching her opinion, the ALJ’s third reason for  
10 finding Ms. Bindas’s opinion unpersuasive is not valid. *See Woods*, 32 F.4th at 792 (“Even under  
11 the new regulations, an ALJ cannot reject an examining or treating doctor’s opinion as  
12 unsupported or inconsistent without providing an explanation supported by substantial  
13 evidence.”).

14 Finally, the ALJ found Ms. Bindas’s opinion was inconsistent with findings that Plaintiff  
15 had a normal mood and affect, and with findings that she demonstrated good judgment and  
16 insight. AR 24. The ALJ has failed to explain how these findings are inconsistent with Ms.  
17 Bindas’s opinion. This is error. Moreover, in reaching her opinion, Ms. Bindas found Plaintiff  
18 had good judgment. AR 593. She also noted Plaintiff stated her mood was “getting better” and  
19 her affect was constricted and congruent with her stated mood. AR 592. While some treatment  
20 notes related to other medical issues note normal mood, affect and judgment, the ALJ fails to  
21 explain why Ms. Bindas’s observations and opinion related to Plaintiff’s mental health is  
22 inconsistent with her finding and less persuasive than a treatment note unrelated to Plaintiff’s  
23 mental health. *See Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003) (“We require the ALJ  
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1 to build an accurate and logical bridge from the evidence to her conclusions so that we may  
2 afford the claimant meaningful review of the SSA's ultimate findings."'). Therefore, the ALJ's  
3 fourth reason for finding Ms. Bindas's opinion is not valid.

4 For the above stated reasons, the ALJ failed to provide a sufficient reason for finding Ms.  
5 Bindas's opinion unpersuasive. Therefore, the ALJ erred. Had the ALJ properly considered Ms.  
6 Bindas's opinion, the RFC and hypothetical questions posed to the vocational expert may have  
7 contained additional limitations and impacted the ultimate disability determination. Therefore,  
8 the ALJ's error is not harmless and requires reversal.

9 iii. Drs. Kraft and Eisenhauer

10 Plaintiff also argues the ALJ erred in his consideration of the medical opinions submitted  
11 by Drs. Patricia Kraft, Ph.D. and Renee Eisenhauer, Ph.D. Dkt. 9. The ALJ discussed Drs.  
12 Kraft's and Eisenhauer's opinions and determined the opinions were unpersuasive because they  
13 were based on Ms. Bindas's evaluation of Plaintiff. AR 25. The ALJ also stated,

14 the findings are inconsistent with the record as a whole, including with the  
15 claimant's reports that she has received no mental health treatment as of the date of  
16 the hearing. The opinion is also inconsistent with the claimant's reports that she  
17 watches television, does crossword puzzles, hangs out with family, and lives with  
4 other adults. Moreover, the opinion is further inconsistent with findings that she  
had a normal mood and affect, and with findings that she demonstrated good  
judgment and insight.

18 AR 25 (internal citations omitted). The ALJ provided the same reasons for rejecting Drs. Kraft's  
19 and Eisenhauer's opinions as he provided for rejecting Ms. Bindas's opinion. *See* AR 24. The  
20 Court concluded the ALJ erred in his consideration of Ms. Bindas's opinion. As the ALJ rejected  
21 Drs. Kraft's and Eisenhauer's opinions because they were based on Ms. Bindas's opinion and as  
22 the ALJ provided the same invalid reasons for rejecting Drs. Kraft's and Eisenhauer's opinions  
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1 as he gave for rejecting Ms. Bindas's opinion, the Court finds the ALJ erred. On remand, the  
2 ALJ must re-evaluate Drs. Kraft's and Eisenhower's opinions.

3 **IV. Conclusion**

4 Based on the foregoing reasons, the Court finds the ALJ improperly concluded Plaintiff  
5 was not disabled. Plaintiff requests remand for further administrative proceedings. Accordingly,  
6 Defendant's decision to deny benefits is reversed and this matter is remanded for further  
7 administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g) in accordance with  
8 this Order.

9 Dated this 19th day of April, 2024.

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12 David W. Christel  
13 United States Magistrate Judge  
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